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From:

Sent: January 26, 2010 8:48 am

To:

Cc:

Subject: RE: A question regarding Disclosures to China (6105)

Here is some background on your question about whether the China Business Trust is a Business entity eligible to elect its classification.

Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under Section 301.7701-4 or otherwise subject to special treatment.

Section 301.7701-4 provides:

(b) Business trusts. There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, **but which are not classified as trusts for purposes of the Internal Revenue Code because they are not simply arrangements to protect or conserve the property for the beneficiaries.** These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business which normally would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code. However, the fact that the corpus of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association or partnership. **The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701-2.**

Call me when you get in and we can talk about this more.